

REMARKS

Claims 1, 2, 5, 8 - 13, 19 are allowed in the application. The present amendment seeks to correct an inadvertent error made in the last amendment of claim 1 submitted March 10, 2010; the variables involved are R₆ and R₈/R₉. The relevant facts leading to the present amendment are as follows:

(a) In claim 1 as originally submitted, R₆ is selected from a list of 24 choices – (23) recites heterocycles, and (1) – (22) and (24) all pertain to non-heterocyclic groups; R₈ and R₉ are independently selected from hydrogen and a group from R₆, with the proviso that not more than one of R₆, R₈, and R₉ is a heterocycle.

(b) The office action mailed December 14, 2009 (and as corrected in the Interview Summary mailed February 22, 2010) indicates that the examined subject matter includes compounds wherein Y is N, R₆ is optionally substituted 1,2,4-oxadiazole, and R_{2a}, R_{2b}, R_{3a}, R_{3b}, R₇ - R₉, R_b and R_a represent nonheterocyclic groups as set forth in claim 1; the office action further indicates that claim 1 would be allowable if amended to overcome a §112, 2nd paragraph rejection, and "rewritten directed solely to the elected compounds indicated as being examinable, supra."

(c) In Applicants' response submitted March 10, 2010 claim 1 was amended to overcome the §112 rejection and to conform to the indicated allowable subject matter. In particular the R₆ definition in claim 1 was amended to recite only optionally substituted 1,2,4-oxadiazole; thus, choices (1) – (22), and (24) for R₆, all pertaining to "nonheterocyclic groups" were deleted. Inadvertently, however, the definition for R₈/R₉ was not amended to reflect the allowable scope, i.e., R₈/R₉ being selected from the "nonheterocyclic groups" (1) – (22), and (24) of original R₆. Thus, as it stands now R₈ and R₉ in claim 1 are either hydrogen or optionally substituted 1,2,4-oxadiazole. The current definition for R₈ and R₉ is clearly erroneous for the following reasons:

- (i) the original definition for R₈ and R₉ provides that only one of R₆, R₈, and R₉ is a heterocycle; since currently R₆ is a heterocycle, neither R₈ nor R₉ can also be a heterocycle;
- (ii) dependent claims 5, 8, 11, 12 and 19 all include an R₈/R₉ that is neither hydrogen nor optionally substituted 1,2,4-oxadiazole; and
- (iii) none of the exemplified compounds have an R₈/R₉ that is 1,2,4-oxadiazole.

In view of the above remarks, Applicants respectfully submit that the present amendment is needed for proper protection of the invention, and that that it requires no substantial amount of additional work on the part of the Office. The entry of the above amendment is respectfully requested.

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Applicants believe no fee is due in connection with this amendment; however, if there are fees required they may be charged to Merck Deposit Account No. 13-2755.

Respectfully submitted,

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